



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 1007
BOSTON, MASSACHUSETTS 02108
(617) 727-8352

MARY F. MCTIGUE
DIRECTOR

January 4, 1989
AO-89-02

Stuart DeBard
Executive Secretary
Association of Town Finance Committees
84 State Street -- 11th Floor
Boston, Massachusetts 02109

Dear Mr. DeBard:

This letter is in response to your request for an advisory opinion concerning the application of the provisions of M.G.L. c.55 to certain activities of town finance committees.

You have indicated that certain members of town finance committees have concerns about expending municipal funds for the purpose of offering advice to town citizens concerning referenda on overrides and exclusions to tax levy limits. You have noted no specific fact pattern on which this office may base an opinion and therefore we can offer no opinion as to specific actions any members of a particular town finance committee may wish to take. We are prepared, however, to issue a general interpretation of this office's policy with respect to the application of the campaign finance law to municipal officials, including members of town finance committees, making expenditures of municipal funds for political purposes. To that end, we will attempt to address the campaign finance issues posed in your letter, but cannot respond to any issue not directly related to campaign finance matters (for example, the compliance of the proposed by-laws with the cited provisions of M.G.L. c.39 and M.G.L. c.41 to which you make reference on page 2 of your letter).

1. Are town finance committees "political committees" as defined under section 1 of M.G.L. c.55?

Section 1 of M.G.L. c.55 defines a political committee as "any committee, association, organization or other group of persons, including a national, regional, state, county or

municipal committee which receives contributions or makes expenditures for the purpose of . . . opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters."

The longstanding and consistent position of this office has been that, if any organization (including a town finance committee) solicits or receives any money or other thing of value for political purposes, that organization is functioning as a political committee, subject to the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value.

Therefore, a town finance committee, by definition, is not necessarily excluded from being a political committee under the provisions of M.G.L. c.55.

2. Are reports and recommendations made by finance committees considered to have been made in order to influence or affect the vote on any question submitted to the voters of the commonwealth and therefore subject to the provisions of M.G.L. c.55?

It is the opinion of this office that "questions submitted to voters" (as such phrase is used in section 1 of M.G.L. c.55) must appear on the ballot in order for the provisions of M.G.L. c.55 to apply. This office does not consider issues which are debated in an open forum such as a town meeting, even if such issues are resolved by secret vote, to be questions "on the ballot". Therefore, for example, any materials published and disseminated by a finance committee before and in anticipation of a town meeting solely to inform the voters prior to such meeting will not be considered to have been so published and disseminated for the purpose of "influencing or affecting the vote on any question submitted to the voters", even if such materials advocate a "yes" or "no" vote on a topic at such meeting.

It is the opinion of this office that if such materials are printed and distributed in contemplation of a ballot election, however, the provisions of M.G.L. c.55 are fully applicable if such materials advocate opposition to or support of one or more questions appearing on such ballot.

3. What provisions of M.G.L. c.55 are applicable to town finance committees which expend funds in order to influence or affect the vote on a question submitted to the voters on the ballot?

Section 22A of M.G.L. c.55 states:

The treasurer of any city, town, or other governmental

unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters of the commonwealth shall file reports with the director setting forth the amount or value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute, together with the date, purpose, and full name and address of the person to whom it was made.

The treasurer of any city, town, or other governmental unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any other question submitted to the voters of any city or town or any part of any city or town, shall file reports with the clerk of such city or town setting forth the amount of value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute, together with the date, purpose, and full name and address of the person to whom it was made.

It is the opinion of this office, therefore, that if a town finance committee expends municipal funds in order to promote or oppose a question submitted to the voters on a town ballot (rather than at a town meeting), the treasurer of such committee or such town, as the case may be, must file a campaign finance report (Form CPF M10) with the town clerk. (If such expenditure pertains to a question on the state ballot, the report must be filed with this office.)

4. How does the "Anderson" case pertain to campaign finance reports filed by town finance committees under section 22A of M.G.L. c.55?

In Anderson v. City of Boston, 380 N.E. 2d 628 (Mass., 1978), the Supreme Judicial Court addressed the question of whether municipalities have the authority to appropriate and expend funds for the purpose of engaging in any activity designed to influence the results of a referendum question without specific statutory authority to so act. The Court concluded that any right the City of Boston had to appropriate funds for its general corporate purposes was pre-empted by M.G.L. c.55 with respect to the appropriation of funds to be expended to oppose or support a question appearing on the state ballot.

The Anderson suit was instituted by ten taxpayers pursuant to section 43 of M.G.L. c.40 in an effort to prevent the illegal appropriation and expenditure of such funds. A similar suit would need to be initiated against any town finance committee making an expenditure opposing or promoting a question submitted to the voters. Any

information contained on a campaign finance report filed under section 22A of M.G.L. c.55 could provide prima facie evidence to be used in such a suit. And, any final judicial determination that a town finance committee made a similar illegal appropriation would result in the director of this office, or the applicable town clerk, ordering restitution of such funds.

Therefore, any defensive argument concerning the legality of an expenditure made by a town finance committee in order to promote or oppose a question submitted to the voters is applicable only if there is a suit. This office is firmly of the belief that such an argument is not applicable to the question of whether or not a town finance committee must file a campaign finance report pursuant to section 22A of M.G.L. c.55 if such expenditure is made. The campaign finance law unequivocally mandates the filing of a report if municipal funds are used for political purposes and failure to so file will subject the violator to criminal penalties.

5. May individual members of a finance committee promote or oppose questions submitted to the voters?

M.G.L. c.55 deals only with campaign finance activity and does not purport to regulate other activity, such as individual speech. Most of this type of activity is protected by the First Amendment, although if there is individual benefit to be gained by using an individual's official position, such individual may wish to consult with the State Ethics Commission.

If individual members of a finance committee wished to participate in campaign finance activity in their capacities as private citizens, e.g. establishing a political committee to raise and spend monies for a political purpose, M.G.L. c.55 would be applicable.

In summary, it is the opinion of this office that if a town finance committee expends municipal funds in order to promote or oppose an issue presented to the voters on a town ballot, the treasurer of such committee, or the town treasurer, as applicable, must file a campaign finance report with the town clerk disclosing such activity. It is the further opinion of this office that if a town finance committee raises any monies for political purposes, it is functioning as a political committee under M.G.L. c.55 and must fully comply with the provisions thereof.

This office cannot opine as to whether or not statutes or common law authorize by-laws which permit finance committees to use municipal funds to publish reports on referenda questions to be presented to the voters. Certainly the Anderson decision cited above would indicate

that there are inherent risks in municipal officials expending appropriated monies for political purposes. It is not for this office to determine whether there are statutory defenses which may be employed by such officials if suit is brought, however, and we would advise you to seek the advice of town counsel in particular situations.

The opinions contained herein have been rendered solely in the context of the provisions of M.G.L. c.55 and offer no advice as to other statutes or regulations, or non-statutory materials such as the Massachusetts Finance Committee Handbook. Furthermore, as noted above, no specific fact pattern or other representation was made in your request, and therefore this office can offer no advice to you regarding the specific campaign finance activities of town finance committees. We are prepared, based on fact-specific requests, to offer counsel to individual town finance committees on campaign finance activity.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,



Mary F. McTigue
Director

MFM-PLH/bah